

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

HEATHER EMIG,

Case No.

Plaintiff,

vs.

CAPITAL ONE BANK (USA), N.A.

Defendant.

NOTICE OF REMOVAL

Defendant Capital One Bank (USA), N.A. (“Capital One”), by and through its undersigned counsel, removes the above-captioned case from the First Judicial District for Anoka County in the State of Minnesota to the United States District Court for the District of Minnesota pursuant to 28 U.S.C. §§ 1331, 1441, and 1446. In support of removal, Capital One provides the following grounds for removal:

1. On or about August 22, 2019, Plaintiff Heather Emig commenced this action in the Tenth Judicial District for Anoka County in the State of Minnesota by serving a Summons and Complaint on Capital One’s agent for service. *See* Minn. R. Civ. P. 3.01(a). The Complaint names Capital One as the sole defendant. *See* Exhibit 1 (true and correct copy of the Summons and Complaint served on Capital One).

2. Pursuant to 28 U.S.C. § 1441(a), this Court has original jurisdiction over this civil action. Specifically, this Court has federal-question jurisdiction pursuant to 28 U.S.C. § 1331 because the only cause of action alleged is based on the Telephone

Consumer Protection Act, 47 U.S.C. § 227 *et seq.*, a federal statute. *See* Ex. 1, Compl.

¶ 17.

3. Pursuant to 28 U.S.C. § 1446(a), copies of all process, pleadings, and orders which have been served on Capital One are filed herewith as Exhibit 1. Plaintiff has not yet filed any documents with the First Judicial District for Dakota County, Minnesota.

4. Pursuant to 28 U.S.C. § 1446(b)(1), this Notice is timely as it is filed within thirty days of the date that Capital One received the Summons and Complaint.

5. Pursuant to 28 U.S.C. § 1446(d), Capital One concurrently provides written notice of this Notice of Removal to Plaintiff.

6. In filing this Notice of Removal and appearing herein, Capital One does not waive and does not intend to waive any defense available to it in law or in equity, including but not limited to defenses based on a failure to state a claim upon which relief may be granted.

WHEREFORE, notice is given that this action is removed from the First Judicial District for Dakota County, Minnesota to the United States District Court for the District of Minnesota.

Respectfully Submitted,

BALLARD SPAHR LLP

Dated: September 19, 2019

Ballard Spahr LLP

By: /s/ Olivia L. Kratzke

Karla M. Vehrs (#387086)

vehrsk@ballardspahr.com

Olivia L. Kratzke (#400164)

kratzkeo@ballardspahr.com

80 South Eighth Street

2000 IDS Center

Minneapolis, MN 55402-2100

Telephone: (612) 371-3211

Attorneys for Capital One Bank (USA), N.A.

CERTIFICATE OF SERVICE

I hereby certify that on September 19, 2019, a true and correct copy of the foregoing **NOTICE OF REMOVAL** was delivered via first-class mail, postage prepaid, upon the following:

Andrew C. Walker, Esq.
Bennett Hartz, Esq.
Walker & Walker Law Offices, PLLC
4356 Nicollet Avenue South
Minneapolis, MN 55409

Attorneys for Plaintiff

/s/Melissa Ann Johnson
Melissa Ann Johnson